

By: West

S.B. No. 1167

A BILL TO BE ENTITLED

AN ACT

relating to the regulation of certain lending and loan origination practices in connection with home loans.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 156.002, Finance Code, is amended by adding Subdivision (12) to read as follows:

(12) "Subprime home loan" has the meaning assigned by Section 343.201.

SECTION 2. Subchapter C, Chapter 156, Finance Code, is amended by adding Sections 156.216, 156.217, and 156.218 to read as follows:

Sec. 156.216. MORTGAGE BROKER DUTIES. (a) A mortgage broker, in connection with the origination of a mortgage loan, shall:

- (1) act in the applicant's interest;
- (2) act with reasonable care, skill, and diligence;
- (3) act in good faith and engage in fair dealing;
- (4) clearly disclose to the applicant, not later than three business days after receipt of the loan application, all material information, as defined by commission rule, that might reasonably affect the rights, interests, or ability of the applicant to receive the applicant's intended benefit from the loan; and

(5) make a reasonable effort to present the applicant

1 with a range of loan products for which the applicant likely
2 qualifies and that are appropriate to the applicant's existing
3 circumstances, based on information known to or obtained in good
4 faith by the broker.

5 (b) A mortgage broker, at least 72 hours before the date of
6 closing of a mortgage loan originated by the mortgage broker, shall
7 disclose to the borrower the total amount of fees the mortgage
8 broker will receive from any person for loan origination services
9 rendered to the borrower, including:

10 (1) the dollar amount of the fees; and

11 (2) the amount of the fees as a stated percentage of
12 the total loan amount.

13 (c) A mortgage broker shall promptly disclose to an
14 applicant each loan product available to the applicant of which the
15 mortgage broker is aware that is projected to cost the applicant
16 less over the projected term of the loan than a loan product
17 recommended to the applicant by the mortgage broker.

18 (d) A mortgage broker shall broker subprime home loans with
19 regard to the applicant's ability to repay the loan. An applicant's
20 statement of ability to repay a loan is not conclusive evidence of
21 the applicant's ability to repay the loan for purposes of this
22 subsection. A mortgage broker must evaluate other reliable,
23 objective evidence of affordability and ability to repay. The
24 determination of whether an applicant is reasonably able to repay a
25 loan must include a reasonable verification of all sources of
26 income by tax returns, payroll receipts, or bank records.

27 (e) A mortgage broker who violates Subsection (a) or (b) is

1 liable to the aggrieved applicant or borrower for:

2 (1) actual damages caused by the violation;

3 (2) reasonable attorney's fees; and

4 (3) court costs.

5 Sec. 156.217. RESTRICTION ON CHARGE BY MORTGAGE BROKER FOR
6 SUBPRIME HOME LOANS. (a) A mortgage broker may charge or collect a
7 fee for loan origination services in connection with a subprime
8 home loan only if:

9 (1) the applicant or borrower receives the services;

10 and

11 (2) the amount of the fee is reasonably related to the
12 value of the services actually rendered.

13 (b) The amount by which a fee received by the mortgage
14 broker for originating a subprime home loan exceeds the amount
15 disclosed under Section 156.216(b) must be credited to the borrower
16 to pay for loan costs, including closing costs.

17 Sec. 156.218. PROHIBITED PRACTICE. A mortgage broker may
18 not recommend or make a mortgage loan that contains a provision for
19 a prepayment penalty.

20 SECTION 3. The heading to Subchapter C, Chapter 343,
21 Finance Code, is amended to read as follows:

22 SUBCHAPTER C. SUBPRIME AND HIGH-COST HOME LOANS

23 SECTION 4. Section 343.201, Finance Code, is amended by
24 amending Subdivision (1) and adding Subdivisions (1-a) and (3) to
25 read as follows:

26 (1) "Average prime offer rate" has the meaning
27 assigned by 12 C.F.R. Section 226.35(a), as amended.

1 (1-a) "High-cost home loan" means a loan that:

2 (A) is made to one or more individuals for
3 personal, family, or household purposes;

4 (B) is secured in whole or part by:

5 (i) a manufactured home, as defined by
6 Section 347.002, used or to be used as the borrower's principal
7 residence; or

8 (ii) real property improved by a dwelling
9 designed for occupancy by four or fewer families and used or to be
10 used as the borrower's principal residence;

11 (C) has a principal amount equal to or less than
12 one-half of the maximum conventional loan amount for first
13 mortgages as established and adjusted by the Federal National
14 Mortgage Association;

15 (D) is not:

16 (i) a reverse mortgage; or

17 (ii) an open-end account, as defined by
18 Section 301.002; and

19 (E) is a credit transaction described by 12
20 C.F.R. Section 226.32, as amended, except that the term includes a
21 residential mortgage transaction, as defined by 12 C.F.R. Section
22 226.2, as amended, if the total loan amount is \$20,000 or more and:

23 (i) the annual percentage rate exceeds the
24 rate indicated in 12 C.F.R. Section 226.32(a)(1)(i), as amended; or

25 (ii) the total points and fees payable by
26 the consumer at or before loan closing will exceed the amount
27 indicated in 12 C.F.R. Section 226.32(a)(1)(ii), as amended.

1 (3) "Subprime home loan" means a loan that:

2 (A) is made to one or more individuals for
3 personal, family, or household purposes;

4 (B) is secured in whole or part by a lien on:

5 (i) a manufactured home, as defined by
6 Section 347.002, used or to be used as the borrower's principal
7 residence; or

8 (ii) real property improved by a dwelling
9 designed for occupancy by four or fewer families and used or to be
10 used as the borrower's principal residence; and

11 (C) has an annual percentage rate that exceeds
12 the average prime offer rate for a comparable transaction published
13 by the Federal Reserve Board by:

14 (i) at least 1.5 percentage points for a
15 first-lien loan; or

16 (ii) at least 3.5 percentage points for a
17 second-lien loan.

18 SECTION 5. Sections 343.203 and 343.205, Finance Code, are
19 amended to read as follows:

20 Sec. 343.203. NEGATIVE AMORTIZATION. A high-cost or
21 subprime home loan may not provide for a payment schedule with
22 regular periodic payments that cause the principal balance to
23 increase, except that this section does not prohibit negative
24 amortization as a consequence of a temporary forbearance, bridge
25 loan, or restructure sought by the borrower.

26 Sec. 343.205. PREPAYMENT PENALTIES PROHIBITED. A lender
27 may not make a high-cost or subprime home loan containing a

1 provision for a prepayment penalty.

2 SECTION 6. Subchapter C, Chapter 343, Finance Code, is
3 amended by adding Sections 343.207, 343.208, 343.209, 343.210, and
4 343.211 to read as follows:

5 Sec. 343.207. NET BENEFIT REQUIRED FOR SUBPRIME HOME LOANS.
6 A lender may not make a subprime home loan to a borrower that
7 refinances an existing home loan if the new loan does not have a
8 reasonable, tangible net benefit to the borrower considering all of
9 the circumstances, including the terms of both the new and
10 refinanced loans and the borrower's stated loan objectives,
11 repayment ability, current and expected income, and current
12 obligations.

13 Sec. 343.208. RESTRICTION ON INTRODUCTORY RATE OF SUBPRIME
14 HOME LOAN. A lender may not make a subprime home loan that has an
15 initial or introductory interest rate with a term of less than six
16 months.

17 Sec. 343.209. DETERMINATION OF BORROWER'S ABILITY TO REPAY
18 SUBPRIME HOME LOAN. A lender shall make a subprime home loan with
19 regard to the borrower's ability to repay the loan. A borrower's
20 statement of ability to repay a loan is not conclusive evidence of
21 the borrower's ability to repay the loan for purposes of this
22 section. A lender must evaluate other reliable, objective evidence
23 of affordability and ability to repay. The determination of whether
24 a borrower is reasonably able to repay a loan must include a
25 reasonable verification of all sources of income by tax returns,
26 payroll receipts, or bank records.

27 Sec. 343.210. DISCLOSURE OF PROPERTY TAXES AND PROPERTY

1 INSURANCE FOR SUBPRIME HOME LOANS REQUIRED. With respect to a
2 subprime home loan, the first time a lender informs a borrower about
3 the estimated or actual periodic loan payment amount, the lender
4 shall:

5 (1) inform the borrower that an additional amount will
6 be due for property taxes and property insurance; and

7 (2) disclose to the borrower as soon as practicable
8 the estimated amount of the initial periodic payment for property
9 taxes and property insurance.

10 Sec. 343.211. CERTAIN PROVISIONS IN SUBPRIME HOME LOAN
11 AGREEMENT VOID. A provision of a subprime home loan agreement that
12 violates Section 343.205 or 343.208 is void.

13 SECTION 7. Chapter 51, Property Code, is amended by adding
14 Section 51.010 to read as follows:

15 Sec. 51.010. VIOLATION OF SUBPRIME UNDERWRITING STANDARDS
16 AS DEFENSE AGAINST FORECLOSURE; COUNTERCLAIM; INJUNCTION. (a) This
17 section applies only to the foreclosure of a lien on an interest in
18 real property that secures a "subprime home loan," as defined by
19 Section 343.201, Finance Code.

20 (b) A debtor against whom a mortgagee files an action to
21 foreclose the mortgagee's lien on the debtor's interest in real
22 property may assert against the mortgagee, as a defense to the
23 mortgagee's right to payment of the debt secured by the lien or as a
24 counterclaim, that the mortgagee or a person who assigned the
25 security interest held by the mortgagee violated Section 343.203,
26 343.205, 343.207, or 343.208, Finance Code, with respect to the
27 loan secured by the lien.

1 (c) A debtor who receives a notice of default or notice of
2 sale under Section 51.002 from a mortgagee with respect to a loan
3 secured by a lien on the debtor's interest in real property may file
4 an action against the mortgagee at any time before the property is
5 sold at a foreclosure sale under Section 51.002, asserting that the
6 mortgagee is not entitled to payment of the debt secured by the lien
7 because of the violation of Section 343.203, 343.205, 343.207, or
8 343.208, Finance Code, with respect to the loan secured by the lien
9 by the mortgagee or a person who assigned the security interest held
10 by the mortgagee. A debtor who files an action under this section
11 may seek any other relief provided by law for the alleged violation.
12 The court in which the action is filed shall enjoin the sale of the
13 property under Section 51.002 pending a final judgment in the
14 action.

15 SECTION 8. The changes in law made by this Act to Subchapter
16 C, Chapter 343, Finance Code, as amended by this Act, apply only to
17 a loan closed on or after the effective date of this Act. A loan
18 closed before the effective date of this Act is governed by the law
19 in effect when the loan was closed, and the former law is continued
20 in effect for that purpose.

21 SECTION 9. Section 51.010, Property Code, as added by this
22 Act, applies only to a loan closed on or after the effective date of
23 this Act. A loan closed before the effective date of this Act is
24 governed by the law in effect immediately before the effective date
25 of this Act, and that law is continued in effect for that purpose.

26 SECTION 10. This Act takes effect January 1, 2010.